

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

METROPOLITAN LIFE INSURANCE
COMPANY,

Plaintiff,

-against-

KATHRYN CLAIRE CAMPBELL,
CATHERINE LEE WERNER and
SHARON CAMPBELL,

Defendants.

**DECLARATION OF SEAN T.
O'LEARY IN SUPPORT OF
MOTION TO DISMISS OR
STAY ACTION**

07 CV 7310 (GBD)

ECF CASE

SEAN T. O'LEARY, being duly sworn, deposes and says:

1. I am an attorney associated with the law firm of Wormser, Kiely, Galef & Jacobs LLP, attorneys for the Defendants, Kathryn Claire Campbell and Sharon Campbell (the "Defendants"). I am admitted to practice in the United States District Court for the Southern District of New York, and make this Declaration in support of the Defendants' Motion to dismiss the Complaint of the Plaintiff, Metropolitan Life Insurance Company (the "Plaintiff"), or to stay this action pending resolution of the concurrent and parallel action pending in Nevada.

2. I respectfully direct this Court's attention to the Defendants' Memorandum of Law in support of their Motion to dismiss the Complaint or to stay this action, which Memorandum of Law details the legal bases in support of the Motion.

3. For this Court's reference, attached hereto as Exhibit A is a true copy of a Complaint of Kathryn Claire Campbell, dated July 20, 2007, and filed in the Second Judicial District Court of the State of Nevada, County of Washoe, on July 20, 2007.

4. Attached hereto as Exhibit B is a true copy of an Answer of Metropolitan Life Insurance Company, dated August 31, 2007, in the Second Judicial District Court of the State of Nevada, County of Washoe.

5. Attached hereto as Exhibit C is a true copy of an Answer of Catherine Werner, dated August 9, 2007, in the Second Judicial District Court of the State of Nevada, County of Washoe.

6. Attached hereto as Exhibit D is a true copy of the Interpleader Complaint of Metropolitan Life Insurance Company, dated August 15, 2007, and filed with this Court on August 15, 2007.

WHEREFORE, for the reasons stated in its Memorandum of Law, the Defendants request that this Court dismiss the Complaint of the Plaintiff, Metropolitan Life Insurance Company, or stay this action pending resolution of the concurrent and parallel action pending in Nevada, and/or direct such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 7, 2007

/S/
Sean T. O'Leary (SO-4542)

Exhibit A

1 \$1425
2 BARRY L. BRESLOW, ESQ.
3 Nevada State Bar No. 3023
4 NATALIE J. REED, ESQ.
5 Nevada State Bar No. 7495
6 Robison, Belaustegui, Sharp & Low
7 71 Washington Street
8 Reno, Nevada 89503
9 Telephone: (775) 329-3151
10 Facsimile: (775) 329-7169
11 Attorneys for Plaintiff Kathryn Claire Campbell

FILED
2007 JUL 20 PM 3:58
RONALD A. LOEBSTIN, JR.
BY D. Jaramillo
DEPUTY

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

KATHRYN CLAIRE CAMPBELL,

Plaintiff,

CASE NO. CV07 01631

vs.

DEPT.

CATHERINE WERNER; SHARON
D. CAMPBELL; METROPOLITAN
LIFE INSURANCE COMPANY, a
Foreign corporation; and DOES I-V,

Defendants.

COMPLAINT FOR DECLARATORY RELIEF
(EXEMPTION FROM ARBITRATION REQUESTED)

For her Complaint, Plaintiff Kathryn Claire Campbell (hereinafter "Plaintiff")
alleges as follows:

PARTIES

1. Plaintiff is a resident of the State of New York, and the named
beneficiary of a twenty percent (20%) interest in life insurance policy number
0000003220 issued by Defendant Metropolitan Life Insurance Company

ROBISON,
BELAUSTEGUI,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
71 WASHINGTON ST.
RENO, NEVADA 89503
TELEPHONE
(775) 329-3151

1 (hereinafter "MetLife") on the life of Cole C. Campbell (hereinafter "the life
2 insurance policy").

3 2. Upon information and belief, Defendant Catherine Werner ("Werner")
4 is a resident of Washoe County, Nevada and a named beneficiary of a seventy
5 percent (70%) interest in the life insurance policy.
6

7 3. Upon information and belief Defendant Sharon D. Campbell
8 (hereinafter "Defendant Campbell") is a resident of North Carolina and a named
9 beneficiary of a ten percent (10%) interest in the life insurance policy.
10

11 4. Upon information and belief, MetLife is a Foreign corporation qualified
12 and doing business in the State of Nevada with its principal place of business in St.
13 Louis, Missouri.

14 5. Defendants DOES I - V, inclusive, are the fictitious names of
15 Defendants who are the agents, representatives, and/or employees of the named
16 Defendants who are equally responsible for Plaintiff's damages as alleged herein,
17 in either a representative capacity or by virtue of independent acts or omissions.
18 When the true names and identities of these DOE Defendants are ascertained,
19 Plaintiff will seek leave to amend this Complaint to insert their true names and
20 identities.
21
22

23 FACTUAL ALLEGATIONS

24 6. Cole C. Campbell (hereinafter the "Decedent") died February 5, 2007,
25 in Washoe County, Nevada.

26 7. Plaintiff is the Decedent's daughter.

27 8. Defendant Werner is the Decedent's surviving spouse.
28

ROBISON,
BELAUSTEGUI,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
711 WASHINGTON ST.
SPRINGFIELD, NEVADA 89503
TELEPHONE
(775) 328-3151

1 9. Defendant Campbell is the Decedent's ex-wife.

2 10. Plaintiff received a letter from Defendant MetLife dated January 19,
3 2007, stating that Plaintiff was a named beneficiary of the Decedent's life
4 insurance policy. A true and correct copy of that letter is attached hereto as
5 Exhibit A.
6

7 11. Plaintiff filed a claim with Defendant MetLife to receive her twenty
8 percent (20%) share of the Decedent's life insurance policy.
9

10 12. Upon information and belief, Defendant Werner has filed a written
11 objection with MetLife to the distribution of Plaintiff's twenty percent (20%) share
12 of the Decedent's life insurance policy.

13 13. Upon information and belief, Defendant Werner has also filed a written
14 objection with MetLife to the distribution of Defendant Campbell's ten percent
15 (10%) share of the Decedent's life insurance policy.
16

17 14. As of this date, Plaintiff has not received her twenty percent (20%)
18 share of the Decedent's life insurance policy from MetLife as a result of Defendant
19 Werner's actions.

20 15. Upon information and belief, Defendant Campbell has not received her
21 ten percent (10%) share of the Decedent's life insurance policy from MetLife as a
22 result of Defendant Werner's actions.
23

24 16. Although Plaintiff has demanded that MetLife release the Plaintiff's
25 twenty percent (20%) interest in the Decedent's life insurance policy to Plaintiff,
26 Defendant MetLife has refused, and continues to refuse, to do so.
27

28 17. Upon information and belief, although Defendant Campbell has

ROBINSON,
BELAUSTEQU,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
19 WASHINGTON ST.
LANS, NEVADA 89509
TELEPHONE
(775) 338-1151

1 demanded that MetLife release Defendant Campbell's ten percent (10%) interest in
2 the Decedent's life insurance policy to Defendant Campbell, Defendant MetLife has
3 refused, and continues to refuse, to do so.

4
5 **FIRST CLAIM FOR RELIEF**
6 **(Declaratory Relief Against All Defendants)**

7 18. Plaintiff incorporates the allegations contained in paragraphs 1 through
8 17 of her Complaint as though set forth herein.

9 19. A dispute exists as to whether Plaintiff is entitled to her twenty
10 percent (20%) interest in the Decedent's life insurance policy. Plaintiff maintains
11 that she is entitled to a twenty percent (20%) interest, and Defendant Werner
12 maintains that Plaintiff is not entitled to that twenty percent (20%) interest.

13 20. Upon information and belief, a dispute exists as to whether Defendant
14 Campbell is entitled to her ten percent (10%) interest in the Decedent's life
15 insurance policy. Upon information and belief, Defendant Campbell maintains that
16 she is entitled to a ten percent (10%) interest, and Defendant Werner maintains
17 that Defendant Werner is not entitled to that twenty percent (20%) interest.

18 21. Defendant MetLife is unwilling to release to Plaintiff her twenty
19 percent (20%) interest in the Decedent's life insurance policy without a judicial
20 determination of Plaintiff's rights.

21 22. Accordingly, Plaintiff seeks a declaratory judgment from the Court
22 pursuant to NRCP 57 and NRS Chapter 30 that she is entitled to a twenty percent
23 (20%) distribution of the Decedent's life insurance policy, notwithstanding the
24 objection of any Defendant hereto.

25 23. Plaintiff further asserts that there is no just cause or other legal
26
27
28

ROBINSON,
BELAUSTEGUI,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
771 WASHINGTON ST.
LENO, NEVADA 89503
TELEPHONE
(775) 329-5181

1 impediment to a distribution of her twenty percent (20%) interest in the
2 Decedent's life insurance policy, and asks the Court to so hold.

3 24. Due to Defendant Werner's action, Plaintiff has incurred legal fees
4 and costs associated with prosecuting this action, and seeks reimbursement
5 therefore to the extent allowed under Nevada law.
6

7 WHEREFORE, Plaintiff prays for relief as follows:

8 1. For declaratory relief in the form of an Order by this Court finding her
9 the beneficiary of twenty percent (20%) of Cole C. Campbell's MetLife Insurance
10 Policy with accrued interest from the date of the Decedent's death, and ordering
11 distribution to her by MetLife immediately;
12

13 2. For costs of court and attorney's fees incurred;

14 3. For such other and further relief as the Court finds just and proper.
15

16 DATED this 20 day of July, 2007.

17 ROBISON, BELAUSTEGUI, SHARP & LOW
18 A Professional Corporation
19 71 Washington Street
20 Reno, Nevada 89503

21 

22 BARRY L. BRELOW
23 NATALIE J. REED
24 Attorneys for Kathryn Claire Campbell

25 J:\WPData\NJR\25090.001-CAMPBELL Probate/P-Complaint_NJR.7.20.07.wpd
26
27
28

ROBISON,
BELAUSTEGUI,
SHARP & LOW
A PROFESSIONAL
CORPORATION
ATTORNEYS AT LAW
71 WASHINGTON ST.
RENO, NEVADA 89503
TEL/FAX
(775) 325-3151

Exhibit B

1 1130
2 WILLIAM D. NAEVE, ESQ.
3 Nevada Bar No. 7837
4 AMY E. JONES, ESQ.
5 Nevada Bar No. 8517
6 COTKIN & COLLINS
7 A PROFESSIONAL CORPORATION
8 701 Bridger Avenue, Suite 700
9 Las Vegas, Nevada 89101
10 Telephone (702) 384-1722
11
12 Attorneys for Defendant,
13 METROPOLITAN LIFE INSURANCE COMPANY
14
15
16
17
18

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
10 IN AND FOR THE COUNTY OF WASHOE

11 KATHRYN CLAIRE CAMPBELL,	}	CASE NO.: . CV 07 01631 DEPT.: I
12 Plaintiff,		
13 vs.		
14 CATHERINE WERNER; SHARON D.		
15 CAMPBELL; METROPOLITAN LIFE		
16 INSURANCE COMPANY, a Foreign	}	
17 corporation; and DOES I-V,		
18 Defendants.		

19 **DEFENDANT METROPOLITAN LIFE INSURANCE COMPANY'S**
20 **ANSWER TO COMPLAINT FOR DECLARATORY RELIEF**
21

22 Defendant METROPOLITAN LIFE INSURANCE COMPANY (hereinafter
23 "Defendant" or "METLIFE") by and through its attorneys of record, William D. Naeve
24 and Amy E. Jones, of the law firm of Cotkin & Collins, and in answer to the Complaint
25 for Declaratory Relief filed by Plaintiff KATHRYN CLAIRE CAMPBELL
26 ("Plaintiff") in the above-captioned matter, does herein admit, deny, and allege as
27 follows:
28 ///

1 1. In response to paragraph 1, this answering Defendant denies each and
2 every allegation contained in said paragraph because, although a beneficiary form on
3 file identifies this 20% share, Defendant CATHERINE WERNER ("WERNER") is
4 contesting this share based on factual and legal disputes as to the entitlement to the
5 funds.

6 2. In response to paragraph 2, this answering Defendant admits that plaintiff
7 is a named beneficiary of a 10% interest in the life insurance policy which serves as the
8 subject matter of this declaratory judgment action. This answering Defendant alleges
9 that it does not have sufficient information and belief in order to enable it to ascertain
10 the veracity of the remaining allegations contained within this paragraph, and based
11 upon such lack of information and belief denies, both generally and specifically, each
12 and every remaining allegation contained therein, and the whole thereof.

13 3. In response to paragraph 3, this answering Defendant admits that
14 Defendant SHARON D. CAMPELL is a resident of North Carolina. Except as is
15 expressly admitted herein above, this answering Defendant denies, both generally and
16 specifically, each and every remaining allegation contained in said paragraph because
17 although a beneficiary form on file identifies this 10% share, Defendant WERNER is
18 contesting this share based on factual and legal disputes as to the entitlement to the
19 funds.

20 4. In response to paragraph 4, this answering Defendant admits that
21 METLIFE is a foreign corporation qualified to do business in Missouri and Nevada.
22 This answering Defendant denies the remainder of this paragraph.

23 5. In response to paragraph 5, this answering Defendant denies each and
24 every allegation contained in said paragraph because no DOES would be appropriate
25 defendants in this case.

26 6. In response to paragraph 6, this answering Defendant denies, both
27 generally and specifically, each and every allegation contained therein, and the whole
28 thereof.

1 7. In response to paragraphs 7, 8, and 9, this answering Defendant admits
2 same.

3 8. In response to paragraph 10, this answering Defendant denies each and
4 every allegation contained in said paragraph in that the letter speaks for itself.

5 9. In response to paragraph 11, this answering Defendant admits that
6 Plaintiff claimed entitlement to 20% of the life insurance proceeds. This answering
7 Defendant denies the reminder of this paragraph.

8 10. In response to paragraph 12, this answering Defendant admits that
9 Defendant WERNER has submitted writings in opposition to the distribution of the
10 20% share to Plaintiff.

11 11. In response to paragraph 13, this answering Defendant admits that
12 Defendant WERNER has submitted writings in opposition to the distribution of the
13 10% share to Defendant SHARON D. CAMPBELL.

14 12. In response to paragraph 14, this answering Defendant admits that
15 METROPOLITAN LIFE INSURANCE COMPANY has not paid the 20% share
16 because of the conflicting claims of Defendant WERNER and Plaintiff which
17 necessitated the filing of a Complaint in Interpleader in the United States District Court
18 for the Southern District of New York. This answering Defendant denies the remainder
19 of this paragraph

20 13. In response to paragraph 15, this answering Defendant admits that
21 METROPOLITAN LIFE INSURANCE COMPANY has not paid the 10% share
22 because of the conflicting claims filed by Defendants WERNER and SHARON D.
23 CAMPBELL, and each of them, which necessitated the filing of a Complaint in
24 Interpleader in the United States District Court for the Southern District of New York.
25 This answering Defendant denies the remainder of this paragraph.

26 14. In response to paragraphs 16 and 17, this answering Defendant denies
27 each and every allegation contained in said paragraphs, and further adds that METLIFE

28 ///

1 is withholding the proceeds and has filed a Complaint in Interpleader under 28 U.S.C.
2 § § 1335 and 2361 in the Southern District of New York Federal Court because there
3 are factual and legal disputes as to who should receive the proceeds.

4
5 **FIRST CLAIM FOR RELIEF**
6 **(Declaratory Relief Against All Defendants)**

7 15. In response to paragraph 18, this answering Defendant repeats and
8 realleges its answers to the allegations contained within paragraphs 1 through 17 of
9 Plaintiff's Complaint as if the same were more fully set forth herein.

10 16. In response to paragraphs 19 and 20, this answering Defendant
11 admits same.

12 17. In response to paragraph 21, this answering Defendant denies, both
13 generally and specifically, each and every allegation contained within said paragraph as
14 phrased.

15 18. In response to paragraph 22, this answering Defendant denies each and
16 every allegation contained in said paragraph in that the proper jurisdiction to issue such
17 a Declaratory Judgment and provide the relief sought within plaintiff's instant
18 Complaint is through the Complaint in Interpleader filed by this answering Defendant
19 in the United States District Court for the Southern District of New York.

20 19. In response to paragraphs 23 and 24, this answering Defendant denies
21 each and every allegation contained in said paragraphs, which are conclusions of law,
22 and Defendant METLIFE adds that the proper jurisdiction to issue such a Declaratory
23 Judgment and provide the relief sought within plaintiff's instant Complaint is through
24 the Complaint in Interpleader filed by this answering Defendant in the United States
25 District Court for the Southern District of New York.

26 ///

27 ///

28 ///

AFFIRMATIVE DEFENSES

1
2 1. The Federal Court for the Southern District of New York has the
3 jurisdiction to decide the conflicting claims, pursuant to 28 U.S.C. § § 1335 and 2361.

4 2. Defendant METLIFE has filed a statutory interpleader action pursuant to
5 28 U.S.C. § 1335 and will seek a restraining order pursuant to 28 U.S.C. § § 1335 and
6 2361 to enjoin the instant action.

7 3. Defendant METLIFE has no liability beyond the 30% share to be divided
8 between Plaintiff KATHRYN CLAIRE CAMPBELL, and Defendants CATHERINE
9 WERNER and SHARON D. CAMPBELL.

10 4. Defendant METLIFE is entitled to a dismissal with prejudice of all claims
11 submitted by all parties to this matter and any of their assignees and representatives.

12 5. This Court should abate prosecution of this action and refuse to exercise
13 its equitable jurisdiction herein in light of the interpleader action pending in the United
14 States District Court for the Southern District of New York.

15 6. Defendant METLIFE alleges that Plaintiff is barred from recovering the
16 relief sought in her Complaint by reason of the doctrine of estoppel.

17 7. Defendant METLIFE alleges that Plaintiff is barred from recovering the
18 relief sought in her Complaint by reason of the doctrine of waiver.

19 8. Defendant METLIFE alleges that Plaintiff is barred from recovering the
20 relief sought in her Complaint by reason of the doctrine of unclean hands.

21 9. Defendant METLIFE alleges that Plaintiff is barred from recovering the
22 relief sought in her Complaint by reason of the doctrine of laches.

23 10. Defendant METLIFE alleges that Plaintiff is barred from recovering the
24 relief sought in her Complaint inasmuch as the equities do not preponderate in her favor
25 but, rather, preponderate in favor of this answering Defendant.

26 ///

27 ///

28 ///

1 **WHEREFORE**, this answering Defendant, METROPOLITAN LIFE
2 INSURANCE COMPANY, prays for relief as follows:

3 1. For declaratory relief enjoining this action because the Federal Court for
4 the Southern District of New York will decide the conflicting claims pursuant to
5 28 U.S.C. § § 1335 and 2361.

6 2. For a declaratory judgment affirming and recognizing the decision of the
7 Federal Court for the Southern District of New York as resolving the dispute over the
8 remaining 30% of the proceeds and releasing it from all claims by Plaintiff KATHRYN
9 CLAIRE CAMPBELL, and Defendants CATHERINE WERNER and SHARON D.
10 CAMPBELL and any of their assignees and representatives;

11 3. For reimbursement of its costs of court and attorneys' fees; and

12 4. For such other and further relief as the Southern District of New York and
13 this Court find just and proper.

14
15 DATED: August 31, 2007

COTKIN & COLLINS
A PROFESSIONAL CORPORATION

16
17
18
19 By:

#9610
for
WILLIAM D. NAEVE, ESQ.
Nevada Bar No. 7837
AMY E. JONES, ESQ.
Nevada Bar No. 8517
COTKIN & COLLINS
701 Bridger Avenue, Suite 700
Las Vegas, Nevada 89101
(702) 384-1722

Attorneys for Defendant, METROPOLITAN
LIFE INSURANCE COMPANY

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 31st day of August 2007, I served a copy of the **DEFENDANT METROPOLITAN LIFE INSURANCE COMPANY'S ANSWER TO COMPLAINT FOR DECLARATORY RELIEF** upon each of the parties by depositing a copy of same in a sealed envelope in the United States Post Office, first-class postage fully prepaid, and addressed to those counsel of record:

Barry L. Breslow, Esq.
Natalie J. Reed, Esq.
ROBISON, BELAUSTEGUI, SHARP
& LOW
71 Washington Street
Reno, NV 89503

Counsel for Plaintiff
KATHRYN CLAIRE CAMPBELL
Tel: (775)329-3151
Fax: (775)329-7941

Sandra G. Lawrence, Esq.
Paul Cotsonis, Esq.
DYER, LAWRENCE, PENROSE
FLAHERTY & DONALSON
2805 North Mountain Street
Carson City, NV 89703

Counsel for Defendant and
Cross-Claimant
CATHERINE WERNER
Tel: (775) 885-1896
Fax: (775) 885-8728

Lance N. McKenzie, Esq.
AVANSINO, MELARKEY, KNOBEL
& MULLIGAN
4795 Caughlin Pkwy, Suite 100
Reno, NV 89509

Counsel for Defendant
and Cross-Claimant
SHARON D. CAMPBELL
Tel: (775)333-0300
Fax: (775)330-0305



Dawn Allen, an employee of
COTKIN & COLLINS

Exhibit C

1 1137
2 Sandra G. Lawrence, NV Bar No. 2737
3 Paul Cotsonis, NV Bar No. 8786
4 Dyer, Lawrence, Penrose
5 Flaherty & Donaldson
6 2805 Mountain Street
7 Carson City, NV 89703
8 Telephone: (775) 885-1896
9 Attorneys for Defendant Catherine Werner

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
11 IN AND FOR THE COUNTY OF WASHOE

12 KATHRYN CLAIRE CAMPBELL,

CASE NO.: CV07 01831

13 Plaintiff,

ANSWER TO COMPLAINT FOR
DECLARATORY RELIEF; and
CROSS CLAIM

14 vs.

15 CATHERINE WERNER; SHARON D.
16 CAMPBELL; METROPOLITAN LIFE
17 INSURANCE COMPANY, a Foreign
18 Corporation; and, DOES I-V,

19 Defendants,

20 and

21 CATHERINE LEE WERNER,

22 Cross Claimant,

23 vs.

24 METROPOLITAN LIFE INSURANCE
25 COMPANY, a Foreign Corporation; and
26 DOES I-V,

27 Cross Defendants
28

29 Defendant, Catherine Lee Werner, (hereinafter "Defendant Werner") In answer to
30 the complaint for declaratory relief, filed in the above-captioned matter, does herein admit,
31 deny, and allege as follows:

32 1. Answering paragraph 1, Defendant Werner admits, based on information and
33 belief, that Plaintiff is a resident of the State of New York. Defendant Werner further
34 admits the existence of a life insurance policy number 0000003220 issued by Defendant

35 ///

Dyer, Lawrence, Penrose, Flaherty & Donaldson
2805 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 Metropolitan Life Insurance Company (hereinafter "MetLife") on the life of Cole C.
2 Campbell (hereinafter the "Life Insurance Policy"). Defendant Werner denies the
3 remaining allegations in paragraph 1.

4 2. Answering paragraph 2, Defendant Werner admits that she received a seventy
5 percent (70%) interest in the proceeds of the Life Insurance Policy as a named beneficiary
6 of that policy, but denies the remaining allegations in paragraph 2. Defendant Werner
7 herein alleges that her domicile is in the State of Missouri.

8 3. Answering paragraph 3, Defendant Werner admits, based on information and
9 belief, that Defendant Sharon D. Campbell (hereinafter "Defendant Campbell") is a resident
10 of North Carolina but denies the remaining allegation in paragraph 3.

11 4. Answering paragraph 4, Defendant Werner is without information sufficient to
12 form a belief as to the truth or falsity of the allegation contained in paragraph 4, and
13 therefore denies such allegation.

14 5. Answering paragraph 5, Defendant Werner is without information sufficient to
15 form a belief as to the truth or falsity of the allegations contained in paragraph 5, and
16 therefore denies such allegations.

17 6. Answering paragraph 6, Defendant Werner admits the allegation in paragraph
18 6, except that Cole C. Campbell (hereinafter "Decedent") died on January 5, 2007, not on
19 February 5, 2007, as averred in the Complaint.

20 7. Answering paragraph 7, Defendant Werner admits the allegation in paragraph

21 7.

22 8. Answering paragraph 8, Defendant Werner admits the allegation in paragraph

23 8.

24 9. Answering paragraph 9, Defendant Werner admits the allegation in paragraph

25 9.

26 10. Answering paragraph 10, Defendant Werner is without information sufficient to
27 form a belief as to the truth or falsity of the allegations contained in paragraph 10, and
28 therefore denies such allegations.

Dyer, Lawrence, Pearson, Flaherty & Donaldson
2405 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

11. Answering paragraph 11, Defendant Werner is without information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 11, and therefore denies such allegation.

12. Answering paragraph 12, Defendant Werner admits that she has filed a written objection with MetLife in regard to the distribution of a portion of the life insurance proceeds under the terms of the policy, but denies the remaining allegation in paragraph 12.

13. Answering paragraph 13, Defendant Werner admits that she has filed a written objection with MetLife in regard to the distribution of a portion of the life insurance proceeds under the terms of the policy, but denies the remaining allegation in paragraph 13.

14. Answering paragraph 14, Defendant Werner is without information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 14, and therefore denies such allegation.

15. Answering paragraph 15, Defendant Werner is without information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 15, and therefore denies such allegation.

16. Answering paragraph 16, Defendant Werner is without information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 16, and therefore denies such allegation.

17. Answering paragraph 17, Defendant Werner is without information sufficient to form a belief as to the truth or falsity of the allegation contained in paragraph 17, and therefore denies such allegation.

FIRST CLAIM FOR RELIEF
(Declaratory Relief Against All Defendants)

18. Answering paragraph 18, Defendant Werner incorporates by reference each admission and denial made by her in answer to paragraphs 1 through 17, inclusive.

///

Dyer, Lawrence, Penrose, Flaherty & Donakson
2007 Mountain Street
Carson City, Nevada 89703
(775) 885-1896

1 19. Answering paragraph 19, Defendant Werner admits that a dispute exists as to
2 whether plaintiff is entitled to any interest in decedent's life insurance policy. Defendant
3 Werner denies the remaining allegations.

4 20. Answering paragraph 20, Defendant Werner admits that a dispute exists as to
5 whether Defendant Campbell is entitled to any interest in decedent's life insurance policy.
6 Defendant Werner denies the remaining allegations.

7 21. Answering paragraph 21, Defendant Werner is without information sufficient to
8 form a belief as to the truth or falsity of the allegation contained in paragraph 21, and
9 therefore denies such allegation.

10 22. Answering paragraph 22, Defendant Werner is without information sufficient
11 to form a belief as to the truth or falsity of the allegation contained in paragraph 22, and
12 therefore denies such allegation.

13 23. Answering paragraph 23, Defendant Werner is without information sufficient
14 to form a belief as to the truth or falsity of the allegation contained in paragraph 23, and
15 therefore denies such allegation.

16 24. Answering paragraph 24, Defendant denies the allegation in paragraph 24.

17 **FIRST AFFIRMATIVE DEFENSE**

18 Plaintiff's complaint fails to set forth a claim upon which relief can be granted against
19 Defendant Werner based on a number of reasons, including, but not limited to, (1)
20 Defendant Werner is not responsible for MetLife's refusal to pay, if it is obligated to do so,
21 (2) MetLife is not an agent under the control of Defendant Werner and, therefore,
22 Defendant Werner is not liable for the actions or inactions of MetLife, and/or (3) the
23 intention of Decedent was that his spouse Defendant Werner receive all the proceeds of
24 his life insurance Policy, in their entirety..

25 **SECOND AFFIRMATIVE DEFENSE**

26 Plaintiff's complaint should fail for lack of jurisdiction over the subject matter pled.

27 ///

28 ///

Dyer, Lawrence, Pearson, Flaherty & Donaldson
2003 Mountain Street
Carson City, Nevada 89703
(775) 245-1896

THIRD AFFIRMATIVE DEFENSE

Plaintiff's complaint should fail for lack of jurisdiction over the person of Defendant Werner.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's complaint fails to set forth a claim upon which legal fees and costs can be awarded against Defendant Werner.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's complaint as to any claims raised on behalf of Defendant Campbell should fail as Plaintiff has no right to raise such claims on behalf of Defendant Campbell.

SIXTH AFFIRMATIVE DEFENSE

Defendant MetLife should be estopped from claiming it has no obligation to pay the remaining life insurance proceeds to Defendant Werner in light of the misrepresentations MetLife made to Decedent regarding Decedent's Policy, including but not limited to, inaccurate or misleading information on its eServices web site that indicated that Defendant Werner was Decedent's sole primary beneficiary.

SEVENTH AFFIRMATIVE DEFENSE

As to any alleged right of Defendant Sharon D. Campbell to the life insurance proceeds, such right arose out of an alimony obligation owed by Decedent under a Decree of Divorce and said obligation has been satisfied. Therefore there has been accord and satisfaction for said obligation and it would be unjust enrichment for Defendant Campbell to receive any insurance proceeds from Decedent.

WHEREFORE, Defendant Werner prays for judgment in its favor and against Plaintiff as follows:

1. That Plaintiff take nothing by way of her complaint and that the same be dismissed;
2. That the Complaint be dismissed for lack of subject matter jurisdiction;

///

///

Dyer, Lawrence, Poulos, Plakerty & Donaldson
2865 Mountain Street
Carmichael, Nevada 89703
(775) 845-1856

3. That the Complaint be dismissed for lack of in personam jurisdiction over Defendant Werner;
4. For an order declaring that Defendant Catherine Werner is entitled to the remaining life insurance proceeds of the Policy and not Plaintiff or Defendant Campbell;
5. That the Court issue a briefing schedule for the parties to brief the declaratory judgment issues raised in this Complaint;
6. For costs of suit herein incurred;
7. For reasonable attorney's fees; and
8. For such other and further relief as the Court may deem just and proper.

CROSS CLAIM

Comes now, Cross Claimant, Catherine Werner (hereinafter "Werner"), by and through her attorneys, Dyer, Lawrence, Penrose, Flaherty & Donaldson and files this Cross Claim against Cross Defendant METROPOLITAN LIFE INSURANCE COMPANY, a Foreign Corporation, d.b.a. MetLife, Inc. as follows:

PARTIES

1. Werner resides in Saint Louis, Missouri.
2. Werner is the widow of Cole C. Campbell (hereinafter "Decedent"), who died in Reno, Nevada, on January 5, 2007.
3. Based upon information and belief, Cross Defendant METROPOLITAN LIFE INSURANCE COMPANY, a Foreign Corporation, d.b.a. MetLife, Inc., (hereinafter "MetLife") is believed to be a foreign corporation qualified to do business in the State of Nevada and in the State of Missouri, and its principle place of business is in Saint Louis, Missouri.

STATEMENT OF FACTS

4. At the time of his death, Decedent was the owner of a \$1,000,000.00 Metropolitan Life Insurance, Flexible Premium Life Policy, Group: MetLife GVUL ACH Group, Policy Number 0000003220 (hereinafter the "Policy").

///

5. After Decedent's death, Werner filed a claim with MetLife for the proceeds under the Policy, and was informed by MetLife that she would receive only 70% of the Policy proceeds. MetLife has distributed 70% of the Policy proceeds to Werner. Werner is contesting the remaining distribution of the 30 % Policy proceeds.

6. Decedent intended Werner to be the sole primary beneficiary of Decedent's Policy.

7. In 2001, Decedent complied with MetLife's requirement to provide written authorization for MetLife to accept and process electronic transaction requests via MetLife's eServices web site (hereinafter the "eServices").

8. In 2003 and 2005, Decedent used and relied upon the eServices system to administer and make authorized changes to his Policy information, including the designation of beneficiaries.

9. In 2005 MetLife represented to Decedent, on the eServices system, that Werner was the sole Primary Beneficiary of Decedent's Policy.

10. On more than one occasion in 2005 and 2006, Decedent informed Werner that she was the sole beneficiary of his Policy.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment)

11. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 10 of this Cross Claim as if each were fully set forth herein.

12. Werner is a person who may sue for a declaratory judgment under NRS 30.040.

13. A declaration of Werner's rights and status under Decedent's Policy is necessary to determine whether Werner is entitled to the remaining proceeds of the Decedent's Policy.

///

///

SECOND CLAIM FOR RELIEF

(Breach of Contract; Breach of Implied Covenant)

14. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 13 of this Cross Claim as if each were fully set forth herein.

15. The Policy is a contract between MetLife and Decedent. The law implies in every contract a covenant of good faith and fair dealing wherein each party promises to perform the terms and conditions of the contract in good faith and to deal fairly with the other parties to the contract.

16. Werner was a third-party beneficiary of the contract between MetLife and Decedent.

17. MetLife had a legal, contractual and fiduciary obligation to provide accurate and complete information to Decedent regarding his Policy under the eServices system, so that Decedent was able to review, consider, and make changes in the terms of his Policy, including the name(s) of the primary beneficiary.

18. If there are additional primary beneficiaries under Decedent's Policy, then MetLife's eServices system and procedure was or is flawed, and amounted to a breach of MetLife's legal, contractual, or fiduciary obligations to Decedent, to the detriment and injury of Decedent's intended beneficiary, Werner.

19. By failing to provide accurate and correct information to Decedent and refusing to pay the remaining Policy proceeds to Werner, MetLife breached the covenant of good faith and fair dealing that they entered into with Decedent.

20. Werner has been harmed by the actions of MetLife and said harm has resulted in damages to Werner.

///

///

///

///

Werner, Lawrence, Kentner, Halsey & Donaldson
2005 Mountain Street
Chester City, Nevada 89703
(775) 835-1896

THIRD CLAIM FOR RELIEF**(Negligence/Misrepresentation)**

21. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 20 of this Cross Claim as if each were fully set forth herein.

22. At all times relevant to this Cross Claim, MetLife was under a duty to provide Decedent accurate and correct information regarding his Policy on the eServices system. MetLife breached this duty by failing to exercise due care in regard to the information it placed on the eServices system. The actions of MetLife constitute misrepresentation or negligence.

23. Alternatively, if the eServices representation showing Werner as the sole Primary Beneficiary was a mistake, error, or misrepresentation then Werner was damaged as a consequence of that mistake, error, or misrepresentation.

24. Werner has been harmed by the actions of MetLife and said harm has resulted in damages to Werner.

FOURTH CLAIM FOR RELIEF**(Promissory Estoppel)**

25. Werner hereby alleges and incorporates by reference each and every allegation contained in paragraphs 1 through 24 of this Cross Claim as if each were fully set forth herein.

26. MetLife knew or should have known that Decedent would rely on information present on the eServices system regarding his Policy and his beneficiary designations because MetLife intended, in creating the eServices system, that it be used for that purpose by policyholders using eServices.

27. Decedent was not aware of the true state of the facts of his Policy information because of the inaccurate, incorrect, or omitted information placed on the eServices system by MetLife regarding Decedent's choice of a primary beneficiary.

///

Dyer, Lawrence, Penrose, Flaherty & Donaldson
2805 Mainline Street
Carson City, Nevada 89703
(775) 885-1856

1 28. Decedent relied, to his detriment, on the information on eServices and as a
2 result of his reliance on that information, Werner was been damaged because she did not
3 receive the full Policy proceeds intended by the Decedent.

4 29. Based on the intent, use and application of the eServices system in relation to
5 Decedent's account, MetLife should be estopped from asserting that Werner is not the
6 primary beneficiary of the remaining thirty percent (30%) of the Policy.

7 30. Werner has been harmed by the actions of MetLife and said harm has resulted
8 in damages to Werner.

9 **FIFTH CLAIM FOR RELIEF**

10 **(Nonfeasance; Misfeasance)**

11 31. Werner hereby alleges and incorporates by reference each and every allegation
12 contained in paragraphs 1 through 30 of this Cross Claim as if each were fully set forth
13 herein.

14 32. MetLife's failure to provide accurate information on its eServices system
15 regarding Decedent's policy is nonfeasance or in the alternative is misfeasance.

16 33. As a result of (1) the nonfeasance or (2) the misfeasance of MetLife by failing
17 to provide accurate information on its eServices system regarding Decedent's Policy,
18 Werner has been harmed and said harm has resulted in damages to Werner.

19 **SIXTH CLAIM FOR RELIEF**

20 **(Damages)**

21 34. Werner hereby alleges and incorporates by reference each and every allegation
22 contained in paragraphs 1 through 33 of this Cross Claim as if each were fully set forth
23 herein.

24 35. Werner has been damaged by MetLife's actions. Said damages include, but
25 are not limited to the value of the remaining proceeds of the Policy, the loss of the use of
26 those proceeds, attorneys fees and costs, and general damages in excess of Ten
27 Thousand Dollars (\$10,000.00).

28 ///

Dyer, Lawrence, Penrose, Flaherty & Donaldson
2805 Mountain Street
Carson City, Nevada 89703
(775) 335-1896

1 WHEREFORE, Cross Claimant Werner prays for judgment in its favor and against
2 Cross Defendant MetLife as follows:

3 1. For Judgment in favor of Cross Claimant Werner and against Cross Defendant
4 MetLife on each and every allegation and claim of this Cross Claim;

5 2. For Judgment in favor of Cross Claimant Werner and against all Cross
6 Defendants for damages in an amount in excess of Ten Thousand Dollars (\$10,000.00);

7 3. For an order declaring that Cross Claimant Werner is entitled to the remaining
8 life insurance proceeds of the Policy;

9 4. That the Court issue a briefing schedule for the parties to brief the declaratory
10 Judgment issues raised in this Cross Claim;

11 5. For costs of suit herein incurred;

12 6. For reasonable attorney's fees; and

13 7. For such other and further relief as the Court may deem just and proper.

14 DATED this 9th day of August, 2007.

15 Dyer, Lawrence, Penrose
16 Flaherty & Donaldson

17 By: Sandra G. Lawrence
18 Sandra G. Lawrence
19 Attorneys for Defendant
20 Catherine Werner
21
22
23
24
25
26
27
28

Dyer, Lawrence, Penrose, Flaherty & Donaldson
2805 Mainline Street
Carson City, Nevada 89703
(775) 883-1856

Exhibit D

JUDGE DANIELS

07 CV 7310

James M. Lenaghan (JL 6473)
Aimee P. Levine (AL 4386)
d'ARCAMBAL, LEVINE & OUSLEY, LLP
40 Fulton Street, Suite 1005
New York, New York 10038
(212) 971-3175
(212) 971-3176 (Facsimile)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

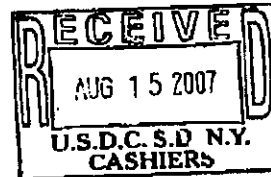
METROPOLITAN LIFE INSURANCE
COMPANY,

Plaintiff,

-against-

KATHRYN CLAIRE CAMPBELL,
CATHERINE LEE WERNER, and SHARON
CAMPBELL,

Defendants.



Civil Action No.

**COMPLAINT IN
INTERPLEADER**

Metropolitan Life Insurance Company ("MetLife"), by and through its attorneys,
d'Arcambal, Levine & Ousley, LLP, for its interpleader complaint, alleges as follows:

PARTIES

1. Interpleader plaintiff MetLife is an insurance company organized and existing under the laws of the State of New York with its principal place of business in New York, New York. MetLife is duly licensed to do business in the State of New York.

2. Upon information and belief, defendant Catherine Lee Werner ("Werner") is the spouse of Cole Campbell (the "Decedent"). She resides in St. Louis, Missouri (having recently moved there from Nevada).

3. Upon information and belief, defendant Kathryn Claire Campbell ("K. Campbell") is a surviving daughter of the Decedent. She resides in Brooklyn, New York.

4. Upon information and belief, defendant Sharon D. Campbell ("S. Campbell") is an ex-spouse of the Decedent. She resides in Chapel Hill, North Carolina.

JURISDICTION AND VENUE

5. This Court has jurisdiction under 28 U.S.C. § 1335, in that the adverse claimants are of diverse citizenship and the amount in controversy exceeds \$500.00. There is minimal diversity between the claimants under State Farm Fire & Casualty Co. v. Tashire, 386 U.S. 523 (1967).

6. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(a) (the district where the claim substantially arose).

7. Nationwide service of process is authorized under 28 U.S.C. § 2361.

CAUSE OF ACTION IN INTERPLEADER

8. The Decedent was insured under Plaintiff's Certificate Number 0000003220 under a group variable universal life insurance policy sponsored by Pulitzer Publishing Company. The death benefit under the policy was \$1,026,000.

9. Upon information and belief, the Decedent was a resident of Nevada on the date of his death.

10. On January 5, 2007, the Decedent died. A true and correct copy of the certified death certificate is attached hereto as *Exhibit A*.

11. On the most recent designation of beneficiary form on file, one beneficiary of record was Werner for 70% of the proceeds. Other beneficiaries of record were K. Campbell for 20% of the proceeds and S. Campbell for 10% of the proceeds. A true and correct copy of the printout of said March 10, 2003 beneficiary designation is attached hereto as *Exhibit B*.

12. As a consequence of the Decedent's death, \$1,026,000 in life insurance benefits became available in total to the beneficiaries.

13. Werner as beneficiary of 70% of the policy proceeds has been paid her claim for that percentage of the policy proceeds.

14. However, a dispute has arisen for the remaining 30% of the policy proceeds. K. Campbell claims 20% of the policy proceeds (\$205,200) and S. Campbell claims 10% of the policy proceeds (\$102,600). Their claims are based primarily on the shares listed in the March 2003 designation of beneficiary form. Further, K. Campbell has filed a civil lawsuit with the number CV07 01631 in the Second Judicial District Court for Washoe County, Nevada ("the Nevada lawsuit") seeking payment of 20% of the proceeds. A true and correct copy of the Nevada lawsuit is attached hereto as *Exhibit C*.

15. Werner also claims this remaining 30% share of the proceeds. She bases her claim on several items, including an affidavit from the Decedent's financial planner, an income worksheet, prepared by the Decedent shortly before his death, and a letter from a financial services professional. A true and correct copy of a letter from MetLife to Werner, S. Campbell, and Natalie Reed, the attorney for K. Campbell, and reciting the factual dispute in detail is attached hereto as *Exhibit D*. Further, in the Nevada lawsuit Werner has filed a cross-claim against MetLife seeking entitlement to the proceeds and other amounts in costs, fees and potential damages. A true and correct copy of that cross-claim is attached hereto as *Exhibit E*.

16. Given this factual dispute and the pendency of the Nevada lawsuit and cross-claim, MetLife cannot determine whether the respective 20% and 10% shares of the policy proceeds may be safely paid to K. Campbell and S. Campbell as the designated beneficiaries, or whether Werner should receive the remaining 30% of the proceeds.

17. By reason of the actual or potential claims of the interpleading defendants, MetLife is, or may be, exposed to multiple liability.

18. MetLife, as a mere stakeholder, has no interest (except to recover its attorneys fees and costs of this action) in the total benefits payable, and respectfully requests that this Court determine to whom said benefits should be paid.

19. MetLife accordingly will deposit into the Registry of the Court the current value of the 30% of the policy proceeds which is due and owing in accordance with the terms of the insurance contract for disbursement in accordance with the judgment of this Court.

20. MetLife has not brought this Complaint in Interpleader at the request of any or all of the claimants; there is no fraud or collusion between MetLife and any or all of the claimants; and MetLife brings this Complaint of its own free will and to avoid being vexed and harassed by conflicting and multiple claims.

21. Until this Court rules on the issue of whether Werner, or, in the alternative K. Campbell and S. Campbell, are entitled to the remaining proceeds in question, MetLife cannot safely determine the proper recipient(s) of the policy proceeds without risking exposure to multiple liability.

WHEREFORE, MetLife demands judgment as follows:

- i. Restraining each of the defendants by Order and Injunction of this Court from instituting or pursuing any action, including but not limited to the Nevada lawsuit and cross-claim, against MetLife for the recovery of any proceeds under the policy pursuant to 28 U.S.C. § 2361;
- ii. Requiring the defendants to answer this Complaint in Interpleader and litigate their claims among themselves for the subject proceeds in this action;
- iii. Enjoining each of the defendants from instituting or prosecuting any proceeding in any state or United States court, including but not limited to the Nevada lawsuit, affecting the policy proceeds or interest involved in this Interpleader action pursuant to 28 U.S.C. § 2361;
- iv. Requiring that defendants settle and adjust among themselves, or upon their failure to do so, that this Court settle and adjust the claims and determine to whom the remaining policy proceeds should be paid;
- v. Permitting MetLife to deposit the amount of said proceeds, \$307,800 (plus applicable interest, if any), into the Registry of this Court or as this Court otherwise directs to be subject to the order of this Court and to be paid out as this Court shall direct;
- vi. Dismissing MetLife with prejudice and discharging MetLife and Decedent's employer Pulitzer Publishing Co. from any further liability upon payment of the aforementioned proceeds into the Registry of this Court or as otherwise directed by this Court and dismissing with prejudice this action as to MetLife as well as the Nevada lawsuit and cross-claim;
- vii. Awarding MetLife its costs and attorneys fees;
- viii. Awarding MetLife any other and further relief that this Court deems just and proper.

Dated: August 15, 2007
New York, New York

d'ARCAMBAL, LEVINE & OUSLEY, LLP

By: James M. Lenaghan
Aimee P. Levine

40 Fulton Street, Suite 1005
New York, New York 10038
(212) 971-3175
(212) 971-3176 (Facsimile)

Attorneys for Interpleader Plaintiff
Metropolitan Life Insurance Company